

SCOTT D. WILLIAMS
Claimant

CLEARVIEW CITY, INC.
Respondent

CGU HAWKEYE SECURITY
Insurance Carrier

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ORDER

ISSUES

Respondent and its insurance carrier contend Judge Howard erred. They argue that claimant is not credible and, therefore, claimant failed to prove that he injured his back while working for respondent. They request the Board to reverse the preliminary hearing Order and deny claimant's request for benefits. Conversely, claimant requests the Board to affirm the Order.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The preliminary hearing Order should be affirmed.

2. The outcome of this claim hinges upon claimant's credibility. Claimant has now testified twice before the Judge and the Judge has found in his favor despite contradictory testimony from respondent's witnesses. Although claimant did not notice pain for approximately 10 to 15 minutes after pulling on an entangled cable, the Judge impliedly found that it was more probably true than not that claimant hurt his back tugging on a "roto-rooter" machine and cable as alleged. Claimant's testimony is also bolstered by the medical records that were introduced into evidence. Dr. Richard L. Parrett's January 22, 2001 letter states that the most likely cause for claimant's injury was from pulling on the "roto-rooter" cable. The doctor wrote, in part:

. . . It is my opinion that the most likely cause of Mr. William's [sic] low back problems was from pulling the "roto-rooter" type cable while at work. The bending and twisting required while doing this kind of work is a common cause of low back injury.

Additionally, the October 25, 2000 office notes from Dr. Rita Oplotnik contain a history that claimant had back pain since "pulling on a cable while he was roto-rootering at work on October 12, 2000."

In this instance, the Board gives some deference to the Judge's finding of credibility. Therefore, the Board also concludes that claimant's testimony is persuasive and that it is more probably true than not true that claimant injured his back on October 12, 2000, while cleaning a sewer line.

3. At this juncture of the claim, the Board finds and concludes that claimant injured his back while working for respondent and that such accidental injury arose out of and in the course of employment with respondent. Therefore, claimant is entitled to receive workers compensation benefits for his back injury.

WHEREFORE, the Board affirms the February 7, 2001 preliminary hearing Order.

IT IS SO ORDERED.

Dated this ____ day of April 2001.

BOARD MEMBER

c: Chris Miller, Lawrence, KS
Michael H. Stang, Overland Park, KS
Steven J. Howard, Administrative Law Judge
Philip S. Harness, Director